

COMPLAINT 2007 – NO. 4

In Re Green, Hurst and Lantz

DETERMINATION OF NO REASONABLE CAUSE – ORDER OF DISMISSAL

I. HISTORY AND NATURE OF THE COMPLAINT

Separate complaints were received against Representatives Tami Green, Chris Hurst and Patricia Lantz (Respondents) the week of December 10, 2007. Each complaint is accompanied by a copy of an identical letter, dated September 28, 2007, directed to John Masterson, Executive Director of Behavioral Health Resources. Attached to the letter are two pages containing the signatures of twenty eight members of the House, including the Respondent's. The signature sheets also identify the member's legislative districts. The text of the letter is identical to the text of the letter which was the subject of Complaint 2007 – No. 3.

The complaint alleges that Respondents violated the Ethics in Public Service Act (Act) by personally advocating for one side in a labor dispute and threatening the other party with possible loss of funding. The complaint concedes Respondent's are entitled to their public opinion about the dispute but that the use of their "high public office" and the "public purse" is an abuse of power and a violation of the Act. The Board has determined that it has both personal and subject-matter jurisdiction.

The statute in question is RCW 42.52.070 – Special Privileges.

"Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child parents, or other persons."

RCW 42.52.010(14) – provides that "Person means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

II. DETERMINATIONS OF FACT

1. The complaints do not allege that Respondents used any public resources in connection with the letter but rather that Respondents improperly used their public office (position). This allegation is in reference to their signature, together with identification of their legislative districts, and that portion of the letter which Complainants view as a threat with regard to future funding.

2. The text of the letter is identical to the text of the letter complained of in Complaint 2007 – No. 3.
3. A lobbyist for Service Employee’s International Union (SEIU) stated the letter of support for the union was passed around by her and others at a House Democratic fund raiser the evening of September 27, and it was at this time that Respondents signed the letter.

IV. DETERMINATIONS OF LAW

1. Improper use of legislative position has never been characterized by the Board as involving simply the reference to one being a “Representative” or a “Senator.”
2. “Position” should not be used to advocate for a party in a purely personal or private dispute (Complaint Opinion 2006 – No. 4) but there is no assumption that labor disputes involving collective bargaining are always personal or private and that therefore use of legislative position is never permitted (Advisory Opinion 2006 – No. 1). A portion of the letter in question has already been determined to establish a legislative nexus (Complaint Opinion 2007 – No. 3) and in this case no public resources were used.
3. A threat is not a per se violation of the Ethics Act. A threat may be simply an expression of political reality or an expression in furtherance of a permissible legislative function and the facts of each case will determine whether a particular threat or threats are made in furtherance of securing a special privilege in violation of RCW 42.52.070 (Complaint Opinion 2006 – No. 1).
4. Cases in which legislators were determined to have violated RCW 42.52.070 are easily distinguishable on their facts from the present complaint. For instance: use of position to advocate for a legislator’s friend involved in a dispute with her contractor over work done on the friend’s house (Complaint Opinion 2006 No. - 4); and repeated use of position over time to assist a family business (Complaint Opinion 2007 – No. 1B).

V. CONCLUSION AND ORDER

Based upon a review of these facts and previous opinions of the Board we conclude there is no reasonable cause to believe that Respondents violated the Act.

The Complaint is hereby dismissed.

Wayne Ehlers, Chair

Date: